

### **REMARKS**

Claims 1, 2, 10-27, 32, 33, 37-44, and 88-90 were pending prior to this amendment. Claims 1, 2, 13-17, 20-23, 26, 27, 39-41, and 90 have been amended for the reasons mentioned below. Claims 37, 38, and 42 have been cancelled herein without prejudice and may, along with any other unclaimed subject matter in the application, become the basis for claims in a subsequent filing and/or application. Claims 91 and 92 have been newly added. As such, Claims 1, 2, 10-27, 32, 33, 39-41, 43-44, 88-92 are currently presented for examination. Applicants request reconsideration of the application and claims in light of the amendments and comments made herein.

Applicants address each of the objections and rejections in the order in which they appear in the Action.

As an initial matter, Applicants wish to thank the Examiner for the thorough and thoughtful review of the application and the prior art of record.

#### **Double Patenting Rejection Overcome**

Claims 1, 2, 10-27, 32, 33, 37-44, and 88-90 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting, as being unpatentable over claims 1, 2, 10-33, and 35-43 of U.S. Patent Application No. 10/509,466.

Applicants include herewith a terminal disclaimer to address this issue. In filing this terminal disclaimer, Applicants specifically reserve the right to address any double patenting/obviousness issues in the future, whether or not mentioned in this reply, should the need arise. Applicants make particular note of MPEP 804.02 II and established case law findings of the Federal Circuit in Quad Environmental Technologies v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991), that the filing of a terminal disclaimer to obviate a rejection based on a non-statutory double patenting is not an admission of the propriety of the rejection. The filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.

Withdrawal of the obviousness-type double patenting rejection is therefore requested.

### **Section 103(a) Rejection Overcome**

Claims 1, 2, 10-27, 32, 33, 37-44, and 88-90 were rejected under 35 U.S.C. §103(a) as being unpatentable over PCT Publication No. WO 00/71419 (Wilson *et al.*) in view of U.S. Patent No. 5,549,144 (Dworak *et al.*).

The independent claims of the present application (*i.e.*, Claims 1 and 90) are directed to methods of loading a blister of an elongate blister strip with a defined quantity of powder. The claims, as amended, require that the blister strip be moved continuously on a linear path as the blister is registered with a perforation in the rotating plate and the compacted powder content in the perforation is transferred into the blister. Such an arrangement is described by way of example with reference to Figures 5a and 5b.

As conceded by the Examiner, there is no disclosure in *Wilson* of its loading method having the rotary characteristics of the claimed invention. The Examiner takes the position that the features of the claimed invention not in *Wilson* are no more than obvious modifications which are disclosed in *Dworak*. In this regard, the Examiner opines that the "linear path" requirement for the blister strip is found in *Dworak* at Figure 2, items 38, 48 and column 2, line 65-column 3, line 12 (Office Action, page 9, 2nd full paragraph relating to claim 42). However, the Examiner is mistaken.

As is clear from Figure 2 and the associated description bridging columns 2 and 3, the web of pouches 38 is rotated anti-clockwise from the 3 o'clock position to the 6 o'clock position where it is then fed on a linear path to the top sealer 48. As detailed, each pouch of the web 38 is held by vacuum against the outer surface of a filling wheel which rotates on the drive shaft extension 34.

Moreover, dashed line 64 in Figure 2 indicates an arcuate slot in the stationary plate 60 on which the perforated plate 50 rotates and through which the content of the perforations 58 are "dropped" into an underlying pouch 38 held on the rotating filling wheel

(e.g., column 3, lines 47-62 and column 4, lines 49-55). The slot 64 is at the 12 o'clock position.

***Thus, the pouches 38 are moving on a rotary path through the drop zone 64; i.e. when registered and loaded.*** Contrary to the Examiner's opinion, *Dworak* clearly does not disclose that the pouches 38 are moving on a linear path as the pouch is registered with the perforation 58 and the content of the perforation 58 is transferred into the pouch 38.

Consequently, *Dworak* does not disclose a feature also not found in *Wilson*. As a result, a combination of *Wilson* with *Dworak* does not result in subject-matter within the scope of the claims of the present application. Moreover, there is no suggestion of a linear path for the pouches 38 in *Dworak*.

For these reasons, the claims of the present application are not obvious in light of *Wilson* and *Dworak*, and withdrawal of the rejection under 35 USC 103 is therefore requested.

**CONCLUSION**

In light of the comments and amendments made herein, reconsideration is hereby requested. It is respectfully asserted that the specification and claims are in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or to credit any overpayment, particularly including any fees required under 37 CFR §1.16 or §1.17, and any necessary extension of time fees, to Deposit Account No. 07-1392.

Respectfully submitted,

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